

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on February 13, 2003 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Sen. John Esp, Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Brent R. Cromley (D)
Sen. Jim Elliott (D)
Sen. Kelly Gebhardt (R)
Sen. Bill Glaser (R)
Sen. Rick LAIBLE (R)
Sen. Jeff Mangan (D)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 357, 2/10/2003; SB 343,
2/10/2003; SB 340, 2/10/2003
Executive Action: SB 357

HEARING ON SB 357

Sponsor: SENATOR BOB STORY, SD 12, Park City

Opening Statement by Sponsor:

SENATOR BOB STORY, SD 12, Park City said this was an act to limit the number of volunteer firefighters that could serve on a district fire board. He said it was a simple bill that says on the second page no more than two trustees of a fire board can be active volunteers in the district. He said a constituent had asked him to bring this bill forward, because he was concerned that if the majority of a board in a district were active volunteer firefighters then they may be working more in the interest of the district than the taxpayers. He reserved the right to close.

Informational Testimony:

John Semple, MT Fire Alliance, said he had people strongly opinionated on both sides of the issue so he made himself available for questions.

Gordon Morris, MT Association of Counties, just wanted to point out that fire district trustees are generally elected. He said he would be happy to answer questions.

Questions from Committee Members and Responses:

SENATOR JOHN ESP said he read in section 2 that the board of commissioners appoints trustees, he wondered if that was what they did in the sponsor's district.

SENATOR STORY said section 2 is for fire service areas which differ from fire districts. He said a fire district is just like a school district and trustees are elected.

SENATOR MIKE WHEAT asked what the controversy was between his members.

John Semple said opinions amongst his membership varied anywhere from not having any firefighters on a board, to limiting the number of firefighters to asking a fire fighter to resign if he is elected to the board.

SENATOR WHEAT asked if his association was taking a position on this bill.

John Semple replied they were not.

SENATOR WILLIAM GLASER explained that in his area they had a fire department not a service area or a district, but that every able bodied person over the age of 18 was trained to fight fires and registered with the county as a fire fighter. He wondered how this law would effect his situation.

SENATOR STORY said he did not think he would be effected. He did not think they were governed under this law. He said fire districts are limited by law to how many members can be active volunteers.

SENATOR WHEAT asked if the district in Missoula had adopted rules to govern who could be elected, why couldn't all districts adopt rules to limit the number of people on a board who are active firefighters.

SENATOR STORY said they could certainly do that. This bill was requested by someone who was not on the board.

SENATOR JOHN BOHLINGER asked Gordon Morris to give some arguments for and against the bill.

Gordon Morris pointed out that they were dealing with a fire district. The commissioners role in the creation of a fire district is to make the initial appointments to staggered three year terms, then they move into an election phase. They are a separate taxing jurisdiction governed by the five trustees elected and are totally autonomous, the commissioners have no control over the trustees. He said he thought because they were assuming to tinker with an election process they could be playing with a constitutional firecracker.

SENATOR KELLY GEBHARDT asked what the current make-up of the board was and if it was the intent to limit the number of firefighters that could serve on the board.

SENATOR STORY said the qualifications to serve on one of these boards was the same as any elected office. You have to file to run, be of age to serve and win the election. He said a majority of them are active volunteer firemen because they put their names in and no one else wants the job.

SENATOR GEBHARDT asked if the purpose of this bill was to limit the number of firefighters that could serve on the board.

SENATOR STORY said the purpose of this bill was to keep the majority of the board from being active volunteers.

Closing by Sponsor:

SENATOR STORY said he did not want to take up any more time. He agreed it was a local issue. He said he had asked Greg Petesch about constitutional issues and he was assured that they were in their authority to put these type of qualifications on. He said there were districts that would find this difficult to comply with. He said it was up to the voters to decide who would serve.

HEARING ON SB 343

Sponsor: **SENATOR RICK LAIBLE, SD 30, Ravalli County**

Proponents:

Forrest Sanderson, Flathead County
Steve Pilcher MT Stockgrowers Association

Opponents:

Linda Stoll, MT Association of Planners
Tim Davis, MT Smart Growth Coalition
Jani McCall, City of Billings
Don Judge, MT Chapter of Sierra Club
Gordon Morris, MT Association of Counties

Opening Statement by Sponsor:

SENATOR RICK LAIBLE, SD 30, Ravalli County, said SB 343 made a real simple change, actually it was a one word change from 60 percent to all. He explained why the bill was before the committee. He said Montana was experiencing a lot of growth and that growth in his area was coming at the expense of agricultural land. He maintained that the intent of this bill as originally written was good, it said 60% of landowners could get together and form a voluntary zoning district. He said what was happening as a result of this was some farmers and ranchers were being punished, because around them are all the parcels that have been subdivided. So over 60% percent of the land mass was now controlled by small land owners who like open space. So what happens is a neighborhood forms a zoning district and zone how other land in the area can be used. He gave an example of a dairy farm in his area. He said the farmer and his three sons worked the dairy. He was surrounded by land that had been subdivided and new people who had moved into the community. They formed a voluntary zoning district, that this farmer had no input into, and made rules that effected his dairy. One of the rules

was that home occupation was permitted, but the number of employees could not exclude three including family members. The farmer had to let one of his sons go. He also was prohibited from developing his land. **SENATOR LAIBLE** maintained this was not fair. He did not think it was the intent of the original bill. He believed it turned neighbors against one another. He thought the intent was for neighborhoods to come together and plan for growth in their areas. He said forming a voluntary zoning district allows people to control their own destiny. He reiterated that this was a matter of fairness. He said there are many tools that can bring communities together and not tear them apart, and growth policy should be one of them. He thought growth policy was too restrictive and it was turning neighbors against each other. He said, as this statute is currently written, 40% of the landowners would be excluded from the creation of a neighborhood, eliminating free choice. He said this bill was about all land owners having free choice to have a voice in their communities. He made himself available for questions.

Proponents' Testimony:

Forrest Sanderson, Flathead County said he wanted to express full support of the bill on behalf of Commissioner Gipe from Flathead County.

Steve Pilcher MT Stockgrowers Association said they supported the bill as well. He said the sponsor gave a good presentation and there was no more he could add, but they were in full support. He said the MT Farm Bureau was also in support of the bill and wanted him to add their name to the list of proponents.

Opponents' Testimony:

Linda Stoll, MT Association of Planners said setting the bar at 100% was way too high. She compared it to the legislature having to have all 150 votes to pass a piece of legislation. She maintained that reasonable people disagree, and the problem with this bill was that one person could hold up a planning or a zoning district, and they had a problem with that aspect. She sympathized with the problems that Senator LAIBLE had expressed, but she pledged she would explain it to the planners and try to come up with something reasonable. She respectfully asked the committee not to pass this particular legislation.

Tim Davis, MT Smart Growth Coalition said the requirements right now was just a starting point, the county commission still had the final say whether to adopt the zoning district. **{Tape: 1;**

Side: B} Existing law did not just allow a petition. He said he agreed that this was a problem around the state, but they were afraid that trying to get everyone to agree on something would be impossible. He maintained that zoning was not permanent. He said it could be amended. He hoped the committee would take those things into account when looking at this bill.

Jani McCall, City of Billings presented a letter from the city of Billings. **EXHIBIT (los32a01)** She maintained they were against the bill and strongly urged the committee not to support the bill.

Don Judge, MT Chapter of Sierra Club said they rose in opposition to the bill. He said they agreed with problems that other people had pointed out. He hoped the committee could come up with a way to address the concerns that had been raised, but that this bill went to far.

Don Hargrove, Gallatin County said it was difficult to oppose this bill, but said it was interesting that most of the legislation they were interested in was because of fast growth. He understood that people don't like zoning. He thought in Gallatin county it was a four letter word. He agreed with Senator LAIBLE, all of these problems are real. He said you would never have another zoning district if they needed 100% agreement. He did not think this would solve the problems on the table. He said with all respect the committee should not favor this bill.

Gordon Morris, MT Association of Counties said he would not repeat previous testimony, but pointed out there might be an alternative. He offered a suggestion to change the 60% down to a lower percentage. Or say anyone who has title ownership to 25% of the property in the area proposed to be zoned could petition out or be excluded by choice.

Questions from Committee Members and Responses:

SENATOR ESP said there was testimony that this would stop all zoning in the state. He said it was his understanding that all they were talking about was citizen initiated zoning.

Gordon Morris said he should redirect the question to Linda Stoll.

Linda Stoll said there were ways to create zoning districts under other statutes and she would get that information to the committee.

SENATOR ESP asked if most of the zoning in the state had been created using an other process.

Linda Stoll said she did not know the answer to that question. She said she would do her best to get the information.

SENATOR ESP asked if Tim Davis could answer the question he had asked Linda Stoll.

Tim Davis said he believed that there are three different types of zoning. He said most of the zoning outside of cities was citizen initiative zoning.

SENATOR ESP, asked Tim to bring them some information.

Tim Davis replied he would be happy to.

SENATOR ESP said the process suggested here allows one citizen to stop citizen initiated zoning. He wondered what percent of the vote was needed to initiate county or municipal zoning.

Linda Stoll, said she would get them that information.

Forrest Sanderson said protest provisions for county zoning required 40% of the property owners protest the creation of a zoning district to make it invalid, or 50% of the lands tax for agriculture or timber purposes in a proposed zoning district could protest and the district may not be enacted by the commissioners.

SENATOR JEFF MANGAN asked if Senator LAIBLE was going to make it 100% why he just didn't eliminate section 5. He maintained he had been thinking about the same things Gordon Morris had recommended. He wondered if Senator LAIBLE could give some feedback on that.

SENATOR LAIBLE said he had looked at section 5. After he had read it, it seemed like a buyers remorse clause. He thought it gave them a way out and did not hurt what he was trying to do. He said they were talking about a voluntary zoning district as opposed to an involuntary zoning district. He thought there were still ways to have zoning. He said he would like there to be some security to farmers and ranchers even when they don't own a majority of the land in an area.

SENATOR MANGAN said Senator LAIBLE had said this put neighbor against neighbor, he wondered if this wouldn't make that worse.

SENATOR LAIBLE replied he did not think so. He thought this process was to build consensus. He thought this was just another tool in zoning. He thought this gave the farmers and ranchers the ability to participate in the outcome of their land.

{Tape: 2; Side: A}

Closing by Sponsor:

SENATOR LAIBLE said he appreciated the hearing. He understood the concerns of the opponents, but the owners of the land were our ranchers and farmers and they were looking for an opportunity to participate in the future of their land. He believed in the consensus process. He thought that neighborhoods needed to agree on a vision for developed land. He maintained it gave the farmers and ranchers predictability for the future. He said voluntary zoning districts should be open to all the land owners. He appreciated the hearing.

HEARING ON SB 340

Sponsor: **SENATOR DUANE GRIMES, SD 20 Clancy**

Proponents:

Jim Kemble, MARLS
Tim Davis, Smart Growth Coalition
Linda Stoll, MT Planners Association
Forrest Sanderson

Opponents:

None

Opening Statement by Sponsor:

SENATOR DUANE GRIMES, SD 20 Clancy said he did not know a lot about this issue. He said some of the county growth policies in the counties he represented were being misconstrued as mandatory instead of permissive. He read from a letter he had received from Terry Murphy. **EXHIBIT (los32a02)** He said he hadn't found anyone who thought it was a bad idea to verify in the statutes that growth policy is permissive. He said section 1 made it clear what a growth policy was not. He said there was some comment about the word required being changed to authorized, but he left that to the committee's discretion. He maintained he had various individuals come to him and say they agree with the concept of growth policy being permissive rather than mandatory, but in order to accomplish that you wouldn't need section 2 and what follows. He said he also had a proponent say that would have an unintended consequence. He left it up to the committees discretion, and turned the hearing over to proponents and opponents and made himself available for questions.

Proponents' Testimony:

Jim Kemble, Montana Association of Registered Land Surveyors submitted written testimony **EXHIBIT (los32a03)**.

Tim Davis, Smart Growth Coalition said he had talked with Senator Grimes before the hearing about amending the bill and he wanted to let the committee know what those amendments were. Section 1, 2a reads, "require any action by a governing body that is not otherwise required by law", John Holrich from the University of Montana Land Use Law Clinic looked at this and found the word required troubling. He said that could create a whole new problem since zoning is not required, so could you use zoning at all. He thought it could cause some unintended problems. He thought you could get to the intent of the bill by changing that word to authorize. Sections 2 and 3, were talked about last session. The smart growth coalition, realtors, builders, and local governments had gotten together and said growth policy should not be regulatory and they took out of the law, language that said a subdivision proposal must be in accordance with growth policy. What was put in was 11 which is being stricken and they wanted to have that put back in. He agreed that growth policy should not be regulatory but that it needed to be carried out through other regulations such as zoning and capital improvement plans, incentives and subdivision regulations. So he maintained that section 2 and section 3 would not be needed. He urged a do pass with the amendments he explained.

Linda Stoll, MT Planners Association submitted an email to the sponsor that discussed the issues. **EXHIBIT (los32a04)**

Forrest Sanderson Flathead County said he supported the bill with the discussions about the first amendment. He maintained he disagreed with some of the other proponents on section 2, 76-1-606, the effect of growth policy on subdivision regulations. He said as the law is currently written, they draft their subdivision regulations for Flathead County they must be made in accordance with growth policy. He said that could be construed as your subdivision regulations shall implement your growth policy, and that would make your growth policy a regulatory document implemented through defacto zoning in your subdivision regulations. He maintained the adoption of subdivision regulations followed an entirely different program for adoption than county zoning or citizen initiated zoning. He said it was important to the residents of Flathead County to preserve agricultural heritage. He said the language "shall give consideration" as being very important to restoring local control and local decisions, so they can evaluate development based on the merits. He said they would give consideration to their plan

and hold people accountable to zoning and development standards. But it was important not to mesh the process' together. He also commented that section 3 line 2, that language needed to be stricken as well for the reasons he discussed earlier.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR WHEAT asked Tim Davis for his opinion on Mr. Sanderson testimony about section 2 and 3.

Tim Davis said that what can be included in your subdivision regulations are already well prescribed, and it was fairly limited. He said you should be bringing your subdivision regulations into accordance with your growth policy or frankly there would be no need for a growth policy. Section 3 describes what the restrictions on growth policy should be and what subdivision regulations can be and he did not believe they can be construed beyond that but they should be in accordance with growth policy.

SENATOR WHEAT said what he thought Mr. Sanderson was talking about was simply having some discretion in implementing both growth policy and subdivision regulations. He understood his testimony to convey he was afraid this language was forcing local governments that subdivision regulations must be in accordance to growth policy in effect making it the document that drives everything.

Tim Davis said the in accordance language, was language that had already been in the law and been used through zoning. He said right now zoning has to be in accordance with growth policy. He believed that the language had been tested and used, and it wasn't entirely restrictive. He maintained the courts had established there only needed to be significant compliance not complete compliance with growth policy just in accordance.

SENATOR WHEAT said they had heard other growth policy bills this session and there had been discussion about amending those bills to give some discretion to governing bodies when reviewing or giving consideration to other requirements that are set out when you adopt growth policy. He asked Tim if he thought giving discretion to county commissioners would allay Mr. Sanderson's fears about section 2 and 3.

Tim Davis said they believed that there was already discretion on how local governments interpret growth policy. He did not think

the in accordance language tied them completely to being exactly consistent with growth policy. He said when the whole group got together and worked out HB 543 last session, the language was agreed upon.

{Tape: 2; Side: B}

SENATOR WHEAT asked Mr. Sanderson why he thought the language was so confining. Did he think that this language made the growth policy dominant over everything they did.

Forrest Sanderson said he did believe that the language "must be made in accordance with" was problematic. If you look at zoning case law, there are a number of cases where this language is seriously open to interpretation. He thought they had to be very careful with the language used in terms of requirements. He believed he had a letter sent to the smart growth coalition by an attorney discussing this issue exactly. He said the jest of that letter was you darn well better make your subdivision regulations consistent with your growth policy. He would submit that wasn't the way the process should work. He said all they should be doing is imposing standards for what the infrastructure and regulations hold.

SENATOR WHEAT asked if he was suggesting you develop a growth policy that could not be amended.

Forrest Sanderson said yes, in fact as the laws are written right now, you are mandated to stay consistent with growth policy. The amendment process to a growth policy can be quite cumbersome and as with any public or political process the ends might not be what everyone desires. He said amendments can be highly controversial and sometimes inappropriate.

Closing by Sponsor:

SENATOR GRIMES said he thought he learned a lot from the hearing. He believed there was a difference of opinion on how section 2 applied. From his standpoint he had extensive problems in his county and he was of the opinion that, if you were going to adopt a growth policy, you should have it apply in some fashion. He felt section 2 and section 3 should be removed from the bill. He left it in the good hands of the committee.

EXECUTIVE ACTION ON SB 357

Motion: SEN. ESP moved that SB 357 BE INDEFINITELY POSTPONED.

SENATOR WHEAT said he concurred that the voters should decide.

Vote: Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:30 P.M.

SEN. JOHN C. BOHLINGER, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los32aad)